

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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: 16-CR-00617 (BMC)
UNITED STATES OF AMERICA, :
:
v. : 225 Cadman Plaza East
: Brooklyn, New York
CARMICHAEL, *et al.*, :
: June 19, 2017
Defendants. :
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TRANSCRIPT OF CRIMINAL CAUSE FOR GUILTY PLEA
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording, transcript
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1 (Proceedings began at 2:12 p.m.)

2 THE COURT: All right, folks. Everybody ready?
3 Yes, Your Honor.

4 THE COURT: All right. So we're on the record in
5 United States against Lashawn Ballance, Edward Carrillo, and
6 Johnnie Monroe, 16-CR-617. Counsel, would you state your
7 appearances, please, starting with the Government?

8 MS. GERDES: Good afternoon, Your Honor. Lindsay
9 Gerdes and Andrey Spektor for the United States.

10 THE COURT: Good afternoon.

11 MS. KELLMAN: Good afternoon, Your Honor. Susan
12 Kellman for Lashawn Ballance. My client is present in the
13 court, Judge.

14 THE COURT: Good afternoon to both of you.

15 MR. FRANZ: Good afternoon, Your Honor. Eric Franz
16 on behalf of Edward Carrillo seated to my left.

17 THE COURT: Good afternoon to both of you.

18 MR. STEIN: Good afternoon, Judge. Joel Stein for
19 Johnnie Monroe.

20 THE COURT: Good afternoon to both of you. You're
21 Mr. Monroe?

22 DEFENDANT MONROE: Yes.

23 THE COURT: Okay. All right. Counsel, I understand
24 your clients each wish to plead guilty to Count IV of the
25 indictment pursuant to an agreement with the Government, is

1 that correct?

2 MR. FRANZ: It's actually a lesser included count --

3 THE COURT: Lesser included. Forgive me. Is that
4 in each case?

5 MR. GERDES: Yes, Judge.

6 THE COURT: Lesser included. Okay. All right. And
7 gentlemen -- I'm addressing the defendants -- if you're going
8 to plead guilty to a crime today I'm going to have to ask you
9 certain questions. Your answers must be truthful, so I'm
10 going to ask each of you to stand up for a moment, raise your
11 right hand so I can swear you in. Please raise your right
12 hand.

13 LASHAWN BALLANCE, EDWARD CARRILLO, JOHNNIE MONROE, SWORN

14 THE COURT: All right. Gentlemen, you're sworn to
15 tell the truth. You must tell the truth. If you were to
16 deliberately lie in response to any of my questions you could
17 face additional questions for perjury. Do you all understand
18 that?

19 DEFENDANTS: Yes.

20 THE COURT: Some of these questions I'll just have
21 you all answer together. Some of them I may ask you
22 separately so bear with me when I do that, but I'll note that
23 you all answered yes. So if there's anything that I say that
24 you need me to repeat or explain, please let me know. I'll be
25 happy to do so, but it's very important that you understand my

1 questions. Also, if you need time to confer with your
2 attorneys let me know that. I'll give you as much time as you
3 like. You all understand that? Yes? All right.

4 And I've got from each of you now two documents.
5 From each of you I've got a one-page consent form that appears
6 to have your signature and then a multiple-page document that
7 appears to be your agreement with the Government.

8 Mr. Ballance, did you sign those documents?

9 DEFENDANT BALLANCE: Yes.

10 THE COURT: And did you read and under stand them
11 before you signed them?

12 DEFENDANT BALLANCE: Yes.

13 THE COURT: And Mr. Carrillo, did you understand --
14 read and understand those documents?

15 DEFENDANT CARRILLO: Yes.

16 THE COURT: And that's your signature on those
17 documents?

18 DEFENDANT CARRILLO: Yes.

19 THE COURT: And Mr. Monroe, did you read and
20 understand those documents?

21 DEFENDANT MONROE: Yes.

22 THE COURT: And it's your signature on the documents
23 I've got up here?

24 DEFENDANT MONROE: Yes.

25 THE COURT: All right. I'll discuss each of them

1 with you in some more detail as we go on, but first I want to
2 make sure that you're each confident to proceed. I'm going to
3 do that with each of you individually. I'll start with
4 Mr. Ballance.

5 Sir -- oh, I'm sorry. Before I get to that, if I
6 recall, Mr. Spektor and Ms. Gerdes, I don't have the
7 indictment in front of me. Actually, I could use that if
8 you've got a copy. But my recollection is that there's
9 robbery charges in the indictment; is that correct?

10 MR. SPEKTOR: There is.

11 MR. GERDES: That's correct, Your Honor.

12 THE COURT: Okay. And there may be other crimes
13 that have victims. Has the Government notified each victim of
14 all crimes charged in the indictment?

15 MR. GERDES: Yes, Your Honor.

16 THE COURT: Of today's proceeding?

17 MR. GERDES: Yes, Your Honor.

18 THE COURT: Has any expressed a desire to be heard
19 today?

20 MR. GERDES: No one has, Your Honor.

21 THE COURT: Okay. And I see there's several people
22 sitting in the gallery. I don't know if you need to identify
23 yourselves if you don't want to, but if anybody here believes
24 themselves to be a victim of any crime charged in the
25 indictment today and wishes to be heard about whether a plea

1 should be accepted, I will give you an opportunity to speak if
2 you'd like to be heard. Just let me know.

3 All right. Now, getting back to the defendants,
4 I'll start again with you, Mr. Ballance. I want to make sure
5 you're competent to proceed. How old are you?

6 DEFENDANT BALLANCE: Forty-one.

7 THE COURT: How far did you go in school?

8 DEFENDANT BALLANCE: GED.

9 THE COURT: What does that mean -- oh, GED.

10 DEFENDANT BALLANCE: Yes.

11 THE COURT: I didn't understand you. Are you now or
12 have you recently been under the care of a doctor or a
13 psychiatrist for any reason?

14 DEFENDANT BALLANCE: No.

15 THE COURT: In the last 24 hours have you had any
16 pill or drug or medicine or alcohol?

17 DEFENDANT BALLANCE: No.

18 THE COURT: Have you ever been hospitalized or
19 treated for addiction or substance abuse?

20 DEFENDANT BALLANCE: No.

21 THE COURT: Is your mind clear right now?

22 DEFENDANT BALLANCE: Yes.

23 THE COURT: Have you had any difficulty
24 understanding my questions so far?

25 DEFENDANT BALLANCE: No.

1 THE COURT: All right. Mr. Carrillo, let me turn to
2 you next. How old are you?

3 DEFENDANT CARRILLO: Forty-four.

4 THE COURT: How far did you go in school?

5 DEFENDANT CARRILLO: Associates degree.

6 THE COURT: And are you now or have you recently
7 been under the care of a doctor or psychiatrist for any
8 reason?

9 DEFENDANT CARRILLO: No.

10 THE COURT: In the last 24 hours have had any pill
11 or drug or medicine or alcohol?

12 DEFENDANT CARRILLO: No.

13 THE COURT: Have you ever been treated or
14 hospitalized in any way for a substance abuse or addiction
15 problem?

16 DEFENDANT CARRILLO: No.

17 THE COURT: And is your mind clear right now?

18 DEFENDANT CARRILLO: Yes.

19 THE COURT: And have you any difficulty
20 understanding me so far?

21 DEFENDANT CARRILLO: No.

22 THE COURT: And finally, Mr. Monroe, how old are
23 you?

24 DEFENDANT MONROE: Forty-six.

25 THE COURT: How far did you go in school?

1 DEFENDANT MONROE: Eleventh grade.

2 THE COURT: And are you now under the care of a
3 doctor or psychiatrist?

4 DEFENDANT MONROE: No.

5 THE COURT: Have you had any pill or drug or
6 medicine or alcohol in the last 24 hours?

7 DEFENDANT MONROE: No.

8 THE COURT: Have you ever been treated or
9 hospitalized for substance abuse or addiction problems?

10 DEFENDANT MONROE: No.

11 THE COURT: So is your mind clear is right now?

12 DEFENDANT MONROE: Yes.

13 THE COURT: And have you had any difficulty
14 understanding my questions so far?

15 DEFENDANT MONROE: No.

16 THE COURT: All right. Now I'll turn to the
17 attorneys.

18 Ms. Kellman, have you discussed the guilty plea with
19 your client?

20 MS. KELLMAN: I have, Your Honor.

21 THE COURT: In your view does he understand the
22 rights that he would waive by pleading guilty?

23 MS. KELLMAN: I believe he does, Judge.

24 THE COURT: And have you had any reason to question
25 your client's competence to proceed today?

1 MS. KELLMAN: No, Your Honor.

2 THE COURT: All right. Mr. Franz, have you
3 discussed a guilty plea with your client?

4 MR. FRANZ: I have.

5 THE COURT: And in your view does he understand the
6 rights that he will waive by pleading guilty?

7 MR. FRANZ: Yes.

8 THE COURT: Do you have any reason to question your
9 client's competence to proceed today?

10 MR. FRANZ: No.

11 THE COURT: And finally, Mr. Stein, have you
12 discussed the guilty plea with your client?

13 MR. STEIN: Yes.

14 THE COURT: In your view does he understand the
15 right that he will waive by pleading guilty?

16 MR. STEIN: Yes.

17 THE COURT: And do you have any reason to question
18 your client's competence to proceed?

19 MR. STEIN: No.

20 THE COURT: Okay. Thank you, all.

21 Now, addressing all of the defendants together,
22 gentlemen, you've each filled out this one-page form and
23 signed it. It's called a consent to have a plea taken before
24 a United States magistrate judge. I want to explain what
25 that's about. I'm what's known as a magistrate judge. Your

1 case is assigned to a higher ranking judge named Judge Cogan.
2 The most important difference between us for today's purpose
3 is that if you are convicted of a crime in this case, it's
4 Judge Cogan, not me, who's going to decide what your sentence
5 should be. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. Now, for that reason you might
8 prefer to have Judge Cogan listen to your plea in person and
9 you have every right to do that if you prefer. If that's what
10 you want, we'll find a time when Judge Cogan is available and
11 no harm will come to you from making that decision. Do you
12 all understand that?

13 THE DEFENDANTS: Yes.

14 THE COURT: You're all indicating yes. Okay. Now,
15 if you all understand that you have that right and you're
16 willing to waive that right, I'll listen to your plea today.
17 We're making a recording of everything that's being said and
18 Judge Cogan will read a transcript of today's proceeding
19 before he decides whether to accept your plea and before he
20 decides what your sentence should be. You all understand
21 that?

22 THE DEFENDANTS: Yes.

23 THE COURT: Okay. Mr. Ballance, are you willing to
24 give up your right to have Judge Cogan listen to your plea and
25 have me do that instead today?

1 DEFENDANT BALLANCE: Yes.

2 THE COURT: Okay. And Mr. Carrillo, are you willing
3 to give up your right to have Judge Cogan listen to your plea
4 and instead have me conduct today's proceeding?

5 DEFENDANT CARRILLO: Yes.

6 THE COURT: And Mr. Monroe, are you willing to give
7 up your right to proceed before Judge Cogan today and instead
8 have me conduct --

9 DEFENDANT MONROE: Yes.

10 THE COURT: -- the proceedings? Okay. Is that what
11 you all intended by signing these one-page forms?

12 THE DEFENDANTS: Yes.

13 THE COURT: All indicating yes. Okay. Now, I
14 should say to counsel on all sides, to the extent I ask
15 questions of the group and answers as a group, any of you
16 think I should for purposes of a clear record ask the clients
17 individually, let me know that and I'll, of course, do that.

18 MS. KELLMAN: Thank you, Your Honor.

19 THE COURT: All right. Now, gentlemen, the next
20 thing I want to do is make sure you understand the charge
21 against you and I'm going to describe the charge to which I
22 understand you'll each plead guilty. It's described as a
23 lesser-included offense under Count IV of the indictment. The
24 way I'm going to explain it to you is I'll first tell you
25 about Count IV as it's charged in the indictment and what the

1 Government would have to prove to convict you of that offense.
2 And then I'll explain how the Government's burden in proving
3 you guilty would be changed under the lesser version of it to
4 which you're pleading guilty. All right. At any point if any
5 of you have a question about that let me know.

6 So that the crime charged in Count IV is described
7 as conspiracy to distribute and to process with intent to
8 distribute Fentanyl and oxycodone. To prove you guilty of
9 that offense as it's charged in the indictment, the Government
10 would have to prove several facts beyond a reasonable doubt.
11 They'd have to prove that each of you entered into an
12 agreement with at least one other person and it could be, you
13 know, one or more of some of the other people at the table.

14 They'd have to prove that the purpose of that
15 agreement was to distribute the controlled substance. And in
16 this case they've had to prove in particular that the
17 controlled substances involved in the agreement involved
18 Fentanyl and oxycodone. They'd have to prove that you entered
19 into this agreement knowingly and intentionally and not as the
20 result of some accident or mistake. They'd have to prove --
21 I'm pausing only because the indictment mentions resulting in
22 death. That's one of the elements of the charge -- the
23 statutory charge.

24 MR. GERDES: Correct, Your Honor. That's charged in
25 the indictment.

1 THE COURT: Wanted to make sure I had that right.
2 So as I said, they'd have to prove that the object of the
3 agreement was to distribute those controlled substances.
4 They'd have to prove that the amount of Fentanyl involved in
5 this agreement or intended to be distributed was 400 grams or
6 more. They'd have to prove that as a result of your conduct
7 and the conduct of others involved in that agreement that were
8 reasonably foreseeable to you, persons who's identified in the
9 indictment as Jan Doe Number 1 died as a result; they'd have
10 to prove that you entered into this agreement or did something
11 to make it succeed; that somebody else did something to make
12 it succeed within the Eastern District of New York. That's a
13 geographical area. That includes Brooklyn, Queens, Nassau,
14 Suffolk and Staten Island. They'd have to prove each of you
15 was involved in this agreement at some point during the period
16 from March through May of 2016.

17 Counsel for the Government, have I omitted or
18 misstated any of the essential elements of the offense?

19 MR. GERDES: No, Your Honor.

20 THE COURT: Okay. Mr. Ballance, do you feel that
21 you understand what the Government would have to prove to
22 convict you of the greater -- as -- diversion of the offenses
23 charged in the indictment?

24 DEFENDANT BALLANCE: Yes.

25 THE COURT: Okay. Mr. Carrillo, do you feel that

1 you understand what the Government would have to prove?

2 DEFENDANT CARRILLO: Yes.

3 THE COURT: And Mr. Monroe, do you feel that you
4 understand what the Government would have to prove?

5 DEFENDANT MONROE: Yes.

6 THE COURT: Okay. Now, what I've described to you
7 is what they would have to prove to convict you of the offense
8 as it's charged. I understand you'll each plead guilty to a
9 less serious version of that offense. And not looking at the
10 statute, I want to make sure with respect to Ms. Gerdes that
11 I'm right, that it's not just the amount that wouldn't have to
12 be proved, but also the resulting in death?

13 MR. GERDES: No, Your Honor. Just the amount, 40
14 grams of Fentanyl.

15 THE COURT: Don't have to prove the resulting death?

16 MR. GERDES: No, we're doing the lesser included
17 with just the conspiracy.

18 THE COURT: Right. So you wouldn't have to prove
19 the amount or the death?

20 MR. GERDES: Correct.

21 THE COURT: Okay. That's what I thought.

22 MR. GERDES: We wouldn't have to prove the 400
23 grams, but the amount we would have to prove is still 40
24 grams.

25 THE COURT: Oh, 40 grams. Okay. Gotcha.

1 MR. GERDES: Sorry for the confusion.

2 THE COURT: Okay. All right. So gentlemen, you
3 heard me tell you that there are two aspects of the agreement
4 to distribute these controlled substances about the amount and
5 the result. The amount would have to be at least 400 grams
6 and the result would have had to be the death of an
7 individual. The less serious version of the offence would
8 require the Government to prove everything I told you about
9 except the amount wouldn't have to be 400 grams. They'd have
10 to prove only that the amount involved at least 40 grams of
11 Fentanyl. And they wouldn't have any burden to prove that
12 death resulted from the conduct.

13 Mr. Ballance, do you understand that?

14 DEFENDANT BALLANCE: Yes.

15 THE COURT: And Mr. Carrillo, do you understand?

16 DEFENDANT CARRILLO: Yes.

17 THE COURT: And Mr. Monroe, do you understand?

18 DEFENDANT MONROE: Yes.

19 THE COURT: Okay. Now, do you all -- gentlemen, do
20 you all feel that you understand now what the Government would
21 have to prove to convict you of the lesser-included offense
22 under Count IV of the indictment?

23 THE DEFENDANTS: Yes.

24 THE COURT: You're all indicating yes. Now, you
25 each have the right to plead not guilty and make the

1 Government prove all those things. Do you understand that?

2 THE DEFENDANTS: Yes.

3 THE COURT: Now, if you plead not guilty, under our
4 Constitution you'll be entitled to a speedy and public trial
5 by a jury with the assistance of counsel on that charge. Do
6 you all understand that?

7 THE DEFENDANTS: Yes.

8 THE COURT: Now -- I'm sorry. Counsel, are all of
9 you appointed?

10 MR. FRANZ: Yes.

11 MR. STEIN: Yes.

12 THE COURT: Okay. So you all have appointed
13 counsel. I want to make sure you understand, gentlemen, that
14 since you can't afford private counsel, the Court has
15 appointed each of your attorneys to represent you. And those
16 attorneys will represent you at every stage of this case. If
17 you want a trial, they'll represent you at trial. If you're
18 found guilty, they'll represent you at sentencing. If you
19 want to challenge your conviction or your sentence on appeal,
20 they'll represent you for that. If for any reason the
21 attorney currently assigned to you becomes unavailable,
22 another lawyer will be appointed to represent you and all of
23 that will be at no cost to you. You all understand that?

24 THE DEFENDANTS: Yes.

25 THE COURT: Okay. Now, at a trial you'd be presumed

1 innocent. The Government would have to overcome that
2 presumption and prove your guilt beyond a reasonable doubt.
3 You would not have to prove your innocence.

4 If the Government failed to prove your guilt beyond
5 a reasonable doubt, the jury would have a duty to find you not
6 guilty. Do you understand that?

7 THE DEFENDANTS: Yes.

8 THE COURT: Also, at the trial the Government would
9 have to bring its witnesses to court so that they could
10 testify in your presence. Your attorney would have the right
11 to cross-examine those witnesses. Your attorney would have
12 the right to object to any evidence that the Government tried
13 to offer against you and your attorney would have the right to
14 offer evidence in your behalf if your attorney thought that
15 that might assist you and that there was evidence that might
16 assist you in that.

17 Your attorney would also have the right to compel
18 witnesses whom you wish to call to appear at the trial. You
19 each understand that?

20 THE DEFENDANTS: Yes.

21 THE COURT: Everybody indicated yes.

22 Also at the trial you would each have the right to
23 testify in your own behalf if you wish to do so, but you
24 couldn't be forced to be a witness at your trial and that's
25 because under our Constitution no one can be forced to testify

1 against himself.

2 So if you decided to go to trial and if you decided
3 not to testify, the Judge would tell the jury not to consider
4 your silence in deliberating on the verdict. Do you each
5 understand that?

6 THE DEFENDANTS: Yes.

7 THE COURT: Now, if you plead guilty and it's based
8 on my recommendation, the Court accepts that plea, you'll be
9 giving up your right to trial and the other rights that I've
10 been discussing with you. There won't be a trial. You will
11 simply be found guilty on the basis of your plea and you'll
12 never be able to challenge that finding of guilt. Not in the
13 appeal in this case, not in some later case, not ever. The
14 question of your guilt would be settled for all time. Do you
15 understand that?

16 THE DEFENDANTS: Yes.

17 THE COURT: You should also understand that if you
18 decide to plead guilty I'm going to ask you some questions and
19 I'll do this individually. I'm going to ask each of you some
20 questions about what you did that makes you think you
21 committed this offense. If you decide to answer my questions
22 and tell me you committed this offense, you'll be giving up
23 your right not to be a witness against yourself. Do you
24 understand that?

25 THE DEFENDANTS: Yes.

1 THE COURT: Everybody is indicating yes. And are
2 you all willing to give up your rights to a trial and the
3 other rights that I've just told you about?

4 THE DEFENDANTS: Yes.

5 THE COURT: Everybody indicate yes.

6 All right. Now, I'm going to talk next about the
7 written agreements that you've all signed. I've got -- let me
8 just make sure this is correct. I've got the original
9 documents that each of you signed here on the bench with me.
10 Do you all have copies of your individual agreements at the
11 desk there with you?

12 THE DEFENDANTS: Yes.

13 THE COURT: Okay. Very good. Now, gentlemen, if at
14 any point while we're discussing these documents do you want
15 to look at the original document you signed, just let me know
16 and I'll bring it down to you. And I think I'd better do this
17 part individually.

18 Mr. Ballance, the document that you signed is that
19 your agreement with the Government?

20 DEFENDANT BALLANCE: Yes.

21 THE COURT: Okay. And you read and understand it --
22 understood it before you signed it?

23 DEFENDANT BALLANCE: Yes.

24 THE COURT: I'm not going to go through it page by
25 page and paragraph by paragraph because I don't want to give

1 you the wrong idea if there's any one part of it that's more
2 important or less important than any other part. As far as I
3 can tell, it's the whole document. That's your agreement with
4 the Government. Is that your understanding as well?

5 DEFENDANT BALLANCE: Yes.

6 THE COURT: Do you think the Government has made any
7 promises to you that are not written down in this document?

8 DEFENDANT BALLANCE: No.

9 THE COURT: Okay. Ms. Kellman, is that your
10 understanding as well?

11 MS. KELLMAN: Yes, Your Honor.

12 THE COURT: And Ms. Gerdes, Mr. Spektor, is that
13 your understanding?

14 MR. GERDES: Yes, Your Honor.

15 THE COURT: Okay. Now, turning to Mr. Carrillo, I'm
16 going to have the same questions for you. Is the document
17 you've signed that I've got here is that your agreement with
18 the Government?

19 DEFENDANT CARRILLO: Yes.

20 THE COURT: And is the whole -- is it your
21 understanding that it's the whole document that's your
22 agreement, not just some parts and not other parts? That's
23 your understanding?

24 DEFENDANT BALLANCE: Yes.

25 THE COURT: Has the Government made any promises

1 that are not included in the agreement?

2 DEFENDANT BALLANCE: No.

3 THE COURT: Okay. And Mr. Franz, that is your
4 understanding as well?

5 MR. FRANZ: That is, Your Honor.

6 THE COURT: Mr. Spektor and Ms. Gerdes, that's your
7 understanding?

8 DEFENDANT CARRILLO: Yes, Your Honor.

9 THE COURT: Okay. And turning next to Mr. Monroe.
10 This document that you signed, is it, in fact, your agreement
11 with the Government?

12 DEFENDANT MONROE: Yes.

13 THE COURT: It's the whole thing that you're in
14 agreement, not just in part, correct?

15 DEFENDANT MONROE: Yes.

16 THE COURT: Do you think the Government has made any
17 promises that are not written down in your agreement?

18 DEFENDANT MONROE: No.

19 THE COURT: Okay. Mr. Stein, is that your
20 understanding as well?

21 MR. STEIN: Yes.

22 THE COURT: And Mr. Spektor and Ms. Gerdes, that's
23 your understanding?

24 MS. GERDES: Yes, Your Honor.

25 THE COURT: Okay. Then gentlemen, let's talk next

1 about what could happen at sentencing if you're convicted of
2 the lesser-included offense under Count IV. And if I'm not
3 mistaken, anybody who thinks I'm wrong please let me know, but
4 if I'm not mistaken it's the same sentence and possibilities
5 for all three of you, so I just wanted to talk to you as a
6 group about that. Okay.

7 In each case if you're convicted of the lesser-
8 included offense under Count IV, the Court could sentence you
9 to spend up to 40 years in prison. Do you all understand
10 that?

11 THE DEFENDANTS: Yes.

12 THE COURT: Answer out loud if you would, please.

13 THE DEFENDANTS: Yes.

14 THE COURT: Okay. The Court must require you under
15 normal circumstances to spend at least five years in prison.
16 Do you all understand that?

17 THE DEFENDANTS: Yes.

18 THE COURT: Yes. In addition to prison the Court
19 must also impose a term of what's called supervised release of
20 at least four years and possibly as long as the rest of your
21 life. What that means is upon your release from prison you
22 would be supervised and you'd have to obey certain conditions.
23 And if during that period of supervision of at least four
24 years and possibly as long as the rest of your life if during
25 that period you were to violate any of the conditions of your

1 supervised release, you could be sentenced to spend up to
2 three more years in prison without credit for the time that
3 you'd already been in prison and without credit for the time
4 that you had already been supervised. Do you all understand
5 that?

6 THE DEFENDANTS: Yes.

7 THE COURT: In addition to prison and supervised
8 release the Court could sentence you to pay a monetary fine of
9 up to five million dollars. Do you all understand that?

10 THE DEFENDANTS: Yes.

11 THE COURT: Indicating yes. In addition to
12 everything I've already told you about, the Court can require
13 each of you to pay restitution in the full amount of each
14 victim's lawsuit resulting from the offenses -- the offense to
15 be -- in an amount to be determined by the court. You all
16 understand that?

17 THE DEFENDANTS: Yes.

18 THE COURT: Let me say one word about that. I don't
19 know what the maximum amount of restitution you might be
20 ordered to pay might be and there are some people who might
21 say, if you can't tell me the worst possible outcome of
22 sentencing I don't want to take a chance, I don't want to
23 plead guilty, and that's fine. If you need to know what the
24 highest amount of restitution that the Court might order you
25 to pay is going to be, don't plead guilty today because I

1 can't tell you what that is. You all understand that?

2 THE DEFENDANTS: Yes.

3 THE COURT: All indicated yes. Are you all willing
4 to proceed, even though I can't tell you that?

5 THE DEFENDANTS: Yes.

6 THE COURT: Okay. Good. Next, in addition to
7 everything else I've already told you about, the Court must
8 require each of you to pay what's called a special assessment
9 in the amount of \$100. Do you all understand that?

10 THE DEFENDANTS: Yes.

11 THE COURT: And finally, the Court must require --
12 or can require you as part of the sentence to pay what's
13 called forfeiture, forfeit property. And in that regard I
14 just want to draw your attention, each of you, to paragraph 6
15 of your respective agreements. For Mr. Ballance, the
16 agreement is that there will be entered a forfeiture money
17 judgment in the amount of \$100,000. And with respect to
18 Mr. Carrillo and Mr. Monroe, each of you -- your agreements
19 refer to a forfeiture money judgment in the amount of
20 \$150,000. And Mr. Carrillo, your agreement also refers to
21 specific property, firearm and ammunition that were seized on
22 December 5, 2016. So part of your -- those amounts and in
23 your case, Mr. Carrillo, those items, those are all things
24 that you anticipate will be ordered forfeited. You give up
25 any claim to them. Understand all that?

1 DEFENDANT CARRILLO: Yes.

2 THE COURT: Mr. Ballance, do you understand?

3 DEFENDANT BALLANCE: Yes.

4 THE COURT: Mr. Carrillo?

5 DEFENDANT CARRILLO: Yes.

6 THE COURT: And Mr. Monroe?

7 DEFENDANT MONROE: Yes.

8 THE COURT: Okay. Mr. Spektor and Ms. Gerdes, have
9 I omitted or misstated any of the potential sentencing
10 possibilities?

11 MS. GERDES: No, Your Honor.

12 THE COURT: Okay. Gentlemen, addressing the
13 defendants, do you feel that you all understand what could
14 happen at sentencing if you're convicted of a lesser-included
15 offense under Count IV?

16 THE DEFENDANTS: Yes.

17 THE COURT: Okay. Then I'll go on next to talk
18 about how the judge will go about choosing your sentences
19 from -- within that range of possibility. The first thing we
20 should talk about in that regard is the federal sentencing
21 guidelines. Have you each discussed those with those
22 attorneys?

23 THE DEFENDANTS: Yes.

24 THE COURT: Okay. Now, I see that for each of you
25 in your respective agreements the Government has provided its

1 calculation of how the guidelines will apply in this case.

2 And I'm sure the prosecutors tried to be accurate in providing
3 that estimate. What you must each understand is that those
4 calculations, that estimate may be wrong, and any calculation
5 or estimate of the guidelines that you've gotten from any
6 other source, whether it's the prosecutors or your attorneys
7 or anyone else may also be wrong. And that's because the only
8 calculation of guidelines that's going to count in your case
9 is the one that the judge does at the time of your sentencing.
10 Do you all understand that?

11 THE DEFENDANTS: Yes.

12 THE COURT: The way these guidelines work is they
13 help the judge consider a sentence by coming up with two
14 scores. The first score measures the seriousness of your
15 offense. So, for example, in a drug case the amount of drugs
16 involved will affect that first score. Do you all understand
17 that?

18 THE DEFENDANTS: Yes.

19 THE COURT: The second score is based on your own
20 personal history. So if you've had a previous conviction that
21 could affect the second score. Do you understand that?

22 THE DEFENDANTS: Yes.

23 THE COURT: With these two scores the judge can look
24 up in a table the box that corresponds to those two numbers.
25 And written down inside that box is a range of months and

1 that's the recommended sentencing guideline range for the
2 case. Do you understand how that works?

3 THE DEFENDANTS: Yes.

4 THE COURT: Now, the judge must consider imposing a
5 sentence within that recommended range, but he could also
6 impose a sentence that's more severe or more lenient. And in
7 making that determination the judge will have to take into
8 account the circumstances of the offense and in each case your
9 background. I'll need to consider the need to promote with
10 respect to the law and the need to impose a just punishment on
11 each of you. He'll each consider the need to deter you and
12 others from committing crimes in the future and he'll need to
13 consider any need each of you may have for effective
14 correctional treatment. And the judge will take all of those
15 factors into account and come up with a sentence that is fair
16 and appropriate for each of you. Do you all understand that?

17 THE DEFENDANTS: Yes.

18 THE COURT: Now, to help the judge make that
19 decision the Probation Department in each of your cases is
20 going to write a report. There will be a separate report for
21 each one of you. And as the Probation Department prepares
22 that report they'll want to sit down to talk to each of you
23 and you can have your attorney present for the interview.
24 They'll probably also talk to prosecutors and the agents, may
25 talk to others as well. And for each of you they'll write a

1 report that has a discussion of what happened in this case and
2 your background. They'll have a discussion of the law that
3 applies and it will have a calculation of the sentencing
4 guideline range that applies -- sentencing guidelines that
5 applies. You'll have a chance to review that report and read
6 it with your attorney before your sentence. You all
7 understand that?

8 THE DEFENDANTS: Yes.

9 THE COURT: Now, you may not like what you see in
10 the report. You may think that it's inaccurate or unfair in
11 some way. You may think that it gets the guidelines wrong or
12 it gets the law wrong. None of those will be a reason to take
13 back your guilty plea. Do you all understand that?

14 THE DEFENDANTS: Yes.

15 THE COURT: Now, if you think there's a problem with
16 the Probation Department's report what you can do is object to
17 it and your attorney will help you file those objections. The
18 judge will hear arguments from the attorneys on both sides
19 about those objections and will rule on them, and then he'll
20 listen to you and your attorney and the prosecutor. If you're
21 a victim so may listen to victims. You may hear from others
22 as well. And he'll calculate the sentencing guidelines that
23 apply and then he'll sentence you. He'll do that for each of
24 you individually.

25 And at any step along the way in that process you

1 may think that the judge makes a mistake of some sort, may
2 think he gets the law or the facts wrong, may think he's
3 unfair, maybe gets the guidelines wrong, again, none of that
4 will be a reason to take back the guilty plea. Do you
5 understand that?

6 THE DEFENDANTS: Yes.

7 THE COURT: Any questions? I -- Mr. Monroe, I
8 didn't hear, did you say yes?

9 DEFENDANT MONROE: Yes.

10 THE COURT: Okay. All right. And just make sure.
11 Now, normally if the judge were to make a mistake in
12 sentencing you would have the right to appeal that sentence to
13 a higher court. You wouldn't have the right to appeal the
14 finding of the appeal if you pleaded guilty, but even after
15 pleading guilty you would still have the right to appeal an
16 unlawful sentence. Do you all understand that?

17 THE DEFENDANTS: Yes.

18 THE COURT: However, I see that in each of your
19 cases each of you has agreed not to file an appeal or
20 challenge your sentence in any other way as long as the
21 sentence is below a certain level. Mr. Ballance, you've
22 agreed that you won't challenge your sentence on appeal or in
23 any other way as long as -- forgive me. I had it here a
24 moment ago.

25 MS. GERDES: Page 3, Your Honor, I believe.

1 THE COURT: Yeah. No, I'm looking for it.

2 MR. SPEKTOR: 108 --

3 MR. GERDES: 108, paragraph 4.

4 THE COURT: Oh, I'm sorry. I was looking at the
5 wrong portion. Thank you. Yes. So as long as the total
6 result, Mr. Ballance, is a sentence of 108 months or less
7 you've agreed not to challenge your sentence on appeal or
8 elsewhere. Is that correct?

9 DEFENDANT BALLANCE: Yes.

10 THE COURT: Okay. Mr. Carrillo, in your case the
11 cutoff is at 168 months. As long as the sentence is 168
12 months in prison or less it is -- you won't appeal your
13 sentence or challenge it in any other way, is that correct?

14 DEFENDANT CARRILLO: Yes.

15 THE COURT: And for you, Mr. Monroe, as long as the
16 sentence is 121 months or less in prison you won't challenge
17 your appeal -- your sentence on appeal or in any other way, is
18 that correct?

19 DEFENDANT MONROE: Yes.

20 THE COURT: Okay. Now, gentlemen, by making those
21 cutoffs part of your agreement each of you is giving up a part
22 of the right that you would otherwise have to appeal an
23 unlawful sentence. Do you all understand that?

24 THE DEFENDANTS: Yes.

25 THE COURT: And is it your intention to give up that

1 part of your right to appeal, Mr. Ballance?

2 DEFENDANT BALLANCE: Yes.

3 THE COURT: Mr. Carrillo?

4 DEFENDANT CARRILLO: Yes.

5 THE COURT: And Mr. Monroe?

6 DEFENDANT MONROE: Yes.

7 THE COURT: Okay. Gentlemen, is there anything --
8 each of you consider this separately. Is there anything at
9 all any of you would like to ask me about the crime charged in
10 this case, about the reduction of the offense that you're
11 pleading to, about your rights, about the sentencing
12 possibilities or anything at all?

13 THE DEFENDANTS: No.

14 THE COURT: Okay. I want to give each of you
15 another chance to answer that question. The reason I do that
16 is that people do sometimes change their minds about pleading
17 guilty and I want to make sure you each understand that if you
18 come back after today and ask to withdraw your guilty plea,
19 the prosecutors will probably argue that you shouldn't be
20 allowed to do so because you said today that you understood
21 what you were doing and they might win that argument.

22 So if there's anything that you need to ask about or
23 think about before making a decision to plead guilty now is
24 really the time to do it because later is -- it may be too
25 late. You all understand that?

1 THE DEFENDANTS: Yes.

2 THE COURT: And Mr. Ballance, is there anything
3 you'd like to ask me about?

4 DEFENDANT BALLANCE: No.

5 THE COURT: And Mr. Carrillo, is there anything
6 you'd like to ask me?

7 DEFENDANT CARRILLO: No.

8 THE COURT: Mr. Monroe, is there anything you'd like
9 to ask me?

10 DEFENDANT MONROE: No.

11 THE COURT: Gentlemen, do any of you feel that you
12 need some more time to think about your decision or to discuss
13 with your attorney?

14 THE DEFENDANTS: No.

15 THE COURT: Okay. Then, I'll -- I think it -- at
16 this point I'm going to go one at a time for the rest of the
17 allocution.

18 Ms. Kellman, do you know of any legal reason why
19 Mr. Ballance should not plead guilty?

20 MS. KELLMAN: No, Your Honor.

21 THE COURT: Mr. Ballance, are you satisfied with the
22 legal representation you've received up until this point?

23 DEFENDANT BALLANCE: Yes.

24 THE COURT: Okay. Then tell me, please, how do you
25 plead to the lesser included offense under Count IV of the

1 indictment, conspiracy to distribute and possess with intent
2 to distribute Fentanyl and oxycodone; guilty or not guilty?

3 DEFENDANT BALLANCE: Guilty.

4 THE COURT: Are you making this plea of guilty
5 voluntarily and of your own free will?

6 DEFENDANT BALLANCE: Yes.

7 THE COURT: Has anyone threatened or forced you to
8 plead guilty?

9 DEFENDANT BALLANCE: No.

10 THE COURT: Other than the promises that are written
11 down in your agreement with the Government has anyone made any
12 promise that is causing you to plead guilty?

13 DEFENDANT BALLANCE: No.

14 THE COURT: Has anyone made any promise about what
15 your sentence will be?

16 DEFENDANT BALLANCE: No.

17 THE COURT: Then tell me, please, in your own words
18 what you did that makes you think you committed that offense?

19 DEFENDANT BALLANCE: Between March 2016 and May 2016
20 in the Queens Bridge Houses and elsewhere I agreed with others
21 to possess with intent to distribute approximately 40 grams of
22 Fentanyl. At the time in this I knew it was illegal.

23 THE COURT: All right. You said at the Queens
24 Bridge Houses. I assume that's in Queens, New York

25 DEFENDANT BALLANCE: Yes.

1 THE COURT: And you said approximately 40 grams of
2 Fentanyl. Did you understand that the purpose of the
3 agreement was to distribute at least 40 grams?

4 DEFENDANT BALLANCE: Yes.

5 THE COURT: Okay. And counsel for the Government is
6 there anything further that you'd like me to elicit or that
7 you'd like to proffer?

8 MS. GERDES: No, Your Honor.

9 THE COURT: Okay. Do you agree with me that
10 Mr. Ballance's allocution satisfies all the essential elements
11 of the offense?

12 MS. GERDES: Yes, Your Honor.

13 THE COURT: All right. Then let me turn next to
14 Mr. Carrillo. And Mr. Franz, is there any legal reason why
15 your client should not plead guilty?

16 MR. FRANZ: No.

17 THE COURT: Mr. Carrillo, are you satisfied with the
18 legal representation you've received up until now?

19 DEFENDANT CARRILLO: Yes.

20 THE COURT: Then tell me, please, how do you plead
21 to the charge contained -- the lesser-included offense under
22 Count IV of the indictment accusing you of conspiracy to
23 distribute and possess with intent to distribute Fentanyl and
24 oxycodone; guilty or not guilty?

25 DEFENDANT CARRILLO: Guilty.

1 THE COURT: Are you making this plea of guilty
2 voluntarily and of your own free will?

3 DEFENDANT CARRILLO: Yes.

4 THE COURT: Has anyone threatened or forced you to
5 plead guilty?

6 DEFENDANT CARRILLO: No.

7 THE COURT: Other than the promises that are written
8 down in your agreement with the Government has anyone made any
9 promise that is causing you to plead guilty?

10 DEFENDANT CARRILLO: No.

11 THE COURT: Has anyone made any promise about what
12 your sentence will be?

13 DEFENDANT CARRILLO: No.

14 THE COURT: Then please tell me in your own words
15 what you did that makes you think you committed this offense?

16 DEFENDANT CARRILLO: Between March 2016 and May
17 2016 --

18 THE COURT: Just slow down because we have to make a
19 clear record of it.

20 DEFENDANT CARRILLO: Between March 2016 and May 2016
21 I entered into an agreement with others to distribute or
22 control substance which contain Fentanyl. I stipulate that an
23 amount of Fentanyl involved was approximately 40 grams and
24 that this conduct occurred in the Eastern District of New
25 York.

1 THE COURT: Okay. And did you enter into this
2 agreement knowingly and intentional, not as a result of some
3 sort of accident or mistake?

4 DEFENDANT CARRILLO: Yes.

5 THE COURT: You said it was approximately 40 grams.
6 Do you agree that the amount was at least 40 grams?

7 DEFENDANT CARRILLO: Yes.

8 THE COURT: Okay. Ms. Gerdes or Mr. Spektor, is
9 there anything further I should elicit or that you'd like to
10 proffer?

11 MS. GERDES: No, Your Honor.

12 THE COURT: And do you agree with me that
13 Mr. Carrillo's allocution satisfies all the essential elements
14 of the offense?

15 MS. GERDES: Yes.

16 THE COURT: All right. Finally, turning to
17 Mr. Monroe, Mr. Stein, is there any legal reason why your
18 client should not plead guilty?

19 MR. STEIN: No.

20 THE COURT: Mr. Monroe, are you satisfied with the
21 legal representation you've received up until now?

22 DEFENDANT MONROE: Yes.

23 THE COURT: Then tell me, please, how do you plead
24 to the lesser-included account -- lesser-included count under
25 Count IV -- let me start that again. I messed it up. Tell

1 me, please, how do you plead to the lesser-included offense
2 under Count IV of the indictment accusing you of conspiracy to
3 distribute and possess with -- intent to distribute Fentanyl
4 and oxycodone; guilty or not guilty?

5 DEFENDANT MONROE: Guilty.

6 THE COURT: Are you making that plea of guilty
7 voluntarily and of your own free will?

8 DEFENDANT MONROE: Yes.

9 THE COURT: Has anyone threatened you or forced you
10 to plead guilty?

11 DEFENDANT MONROE: No.

12 THE COURT: Other than the agreed -- the promises
13 written down in your written agreement with the Government has
14 anyone made any promise that is causing you to plead guilty?

15 DEFENDANT MONROE: No.

16 THE COURT: Has anyone made any promise about what
17 your sentence will be?

18 THE DEFENDANTS: No.

19 THE COURT: Will you please tell me in your own
20 words what you did that makes you think you committed this
21 offense?

22 DEFENDANT MONROE: Between March 2006 and May 2006 I
23 entered an agreement with others -- '16. March --

24 THE COURT: When you said 2006, you meant --

25 DEFENDANT MONROE: Oh.

1 THE COURT: -- 2016?

2 DEFENDANT MONROE: '16, yeah.

3 THE COURT: Okay.

4 DEFENDANT MONROE: And May 2016 I entered in an
5 agreement with others to distribute a controlled substance
6 which contained Fentanyl and the amount was 40 grams in the
7 Eastern District of New York.

8 THE COURT: And did you enter into this agreement
9 knowingly and intentionally, not as a result of some sort of
10 accident or mistake?

11 DEFENDANT MONROE: Yes.

12 THE COURT: Okay. And Ms. Gerdes or Mr. Spektor, is
13 there anything further you'd like me to elicit or that you'd
14 like to proffer?

15 MS. GERDES: No, thank you, Your Honor.

16 THE COURT: Do you agree that Mr. Monroe's
17 allocution satisfies all of the essential elements of the
18 offense?

19 MS. GERDES: We do.

20 THE COURT: All right. Well, based upon what I've
21 heard today I find that each of the three defendants before me
22 is competent to proceed. I further find that each is acting
23 voluntarily. I find that each plea is not the result of any
24 force or threats or undisclosed promises. I find that each of
25 the three defendants before me fully understands his rights

1 and the potential consequences of his plea and that in each of
2 the three cases there is a factual basis for the defendant's
3 plea of guilty.

4 I therefore, respectively recommend that the Court
5 accept each of these three defendants pleas of guilty to the
6 lesser-included offense under Count IV of the indictment. And
7 let me give you a schedule for sentencing proceedings.

8 For Mr. Ballance, I'll ask you to appear before
9 Judge Cogan on October 2nd at 4:30 p.m. For Mr. Carrillo,
10 I'll ask you to appear before Judge Cogan on October 4th at
11 4:30 p.m. And for Mr. Monroe, I'll ask the parties to appear
12 before Judge Cogan for a sentencing procedure on October 6th
13 at 10:00 a.m. All right.

14 MR. STEIN: Judge, did you say October 4th at 4:30?

15 THE COURT: I did.

16 MR. STEIN: Thank you. Judge, I don't have a
17 calendar with me. Do you know what day of the week
18 October 6th is?

19 UNIDENTIFIED VOICE: It's a Friday.

20 THE COURT: There you go. It's a Friday. But, of
21 course, I can't control -- I've been given these dates by
22 Judge Cogan's chambers.

23 MR. STEIN: I understand.

24 THE COURT: If it's a problem, please contact his
25 chambers.

1 MR. STEIN: I'll send him a letter.

2 THE COURT: Yeah. All right. I'm going to return
3 to the prosecutor for safekeeping each of the three original
4 signed plea agreements. Is there anything else for today,
5 folks? No? Thank --

6 MS. GERDES: Nothing from the Government, Your
7 Honor.

8 THE COURT: Thank you all and I appreciate all the
9 work that you all put in to make sure that we could go so
10 smoothly taking a plea from three people together. I think it
11 was very efficient and I appreciate it.

12 MS. GERDES: Thank you to the Court for doing it.

13 THE COURT: Thank you all. Have a good day.

14 ATTORNEY: Thank you, Your Honor.

15 (Proceedings concluded at 2:51 p.m.)

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1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.

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7 Ruth Ann Hager, C.E.T.**D-641

8 Dated: June 23, 2017
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